

Message Text

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ORIGIN TRSE-00

INFO OCT-01 EUR-25 EA-11 ISO-00 AID-20 CIAE-00 COME-00

EB-11 FRB-03 INR-11 NSAE-00 RSC-01 XMB-07 OPIC-12

SP-03 CIEP-03 LAB-06 SIL-01 OMB-01 NSC-07 SS-20

STR-08 CEA-02 L-03 H-03 /159 R

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DRAFTED BY: TREAS:NJACKLIN:GCW

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MBRADFIELD

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R 272310Z AUG 74

FM SECSTATE WASHDC

TO AMEMBASSY BONN

AMEMBASSY BERN

AMEMBASSY BRUSSELS

AMEMBASSY THE HAGUE

AMEMBASSY LONDON

AMEMBASSY OTTAWA

AMEMBASSY PARIS

AMEMBASSY ROME

AMEMBASSY STOCKHOLM

AMEMBASSY TOKYO

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E.O. 11652: NA

TAGS: EFIN

SUBJECT: U.S. GOLD CLAUSE JOINT RESOLUTION

1. RECENTLY ENACTED LEGISLATION WOULD ALLOW
PRIVATE OWNERSHIP OF GOLD BY U.S. CITIZENS AS OF DECEMBER
31, 1974, AT THE LATEST. THIS LAW, WITH ITS ASSURANCE
OF PRIVATE OWNERSHIP BY DECEMBER 31, 1974, RAISES THE
QUESTION OF THE NECESSITY FOR THE CONTINUED APPLICABILITY OF
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THE SO-CALLED GOLD CLAUSE RESOLUTION OF JUNE 1933. THIS

RESOLUTION PROVIDES THAT CONTRACTS WHICH PROVIDE FOR PAYMENT IN AN AMOUNT OF MONEY MEASURED BY THE VALUE OF GOLD ARE AGAINST PUBLIC POLICY AND ARE UNENFORCEABLE IN U.S. COURTS. MOREOVER, THE SUPREME COURT HAS HELD THAT THIS RESOLUTION APPLIES TO MULTIPLE CURRENCY CLAUSES PROVIDING FOR PAYMENT IN DOLLARS OR FOREIGN CURRENCIES, AT THE CREDITOR'S OPTION.

2. WITH PRIVATE GOLD OWNERSHIP COMING INTO EFFECT BY LAW BY DECEMBER 31, 1974, THERE HAS BEEN RENEWED PUBLIC INTEREST IN THE CONTINUED RATIONALE FOR THE APPLICABILITY OF THE GOLD CLAUSE JOINT RESOLUTION. SINCE IT WILL BE POSSIBLE IN THE FUTURE TO PAY CONTRACT OBLIGATIONS IN GOLD, THE QUESTION ARISES SHOULD IT NOT BE POSSIBLE TO MEASURE CONTRACT OBLIGATIONS IN GOLD. MOREOVER, PRIVATE BANKERS HAVE FOR SOME TIME BEEN INTERESTED IN ISSUING MULTIPLE CURRENCY OBLIGATIONS IN THE UNITED STATES SUCH AS ARE CONTAINED IN THE EURCO.

3. IN ORDER TO FORMULATE A U.S. GOVERNMENT POSITION ON THE CONTINUED NECESSITY FOR THE GOLD CLAUSE JOINT RESOLUTION AND WHETHER ANY LEGISLATIVE CHANGES SHOULD BE PROPOSED IT WOULD BE EXTREMELY HELPFUL TO KNOW THE EXPERIENCE AND PRESENTLY APPLICABLE LAWS OF MAJOR FINANCIAL CENTERS. IN THIS CONNECTION IT WOULD BE HELPFUL IF THE ADDRESSEE EMBASSIES COULD OBTAIN THE INFORMATION REQUESTED IN THE FOLLOWING QUESTIONS MAKING USE OF APPROPRIATE GOVERNMENTAL AND CENTRAL BANK SOURCES AS NECESSARY.

4. THE FOLLOWING SPECIFIC INFORMATION IS REQUESTED:

A. DOES HOST COUNTRY HAVE ANY LAW OR REGULATION EQUIVALENT OR SIMILAR TO THE U.S. GOLD CLAUSE JOINT RESOLUTION?

B. MORE GENERALLY DO DOMESTIC LAWS, IN ANY WAY, RESTRICT THE ENFORCEABILITY OR LEGAL VALIDITY OF SUCH CONTRACT CLAUSES AS

(1) A GOLD CLAUSE PROVIDING FOR PAYMENT UNDER THE CONTRACT IN A STATED QUANTITY OF GOLD OR IN CURRENCY EQUIVALENT IN VALUE TO A STATED QUANTITY OF GOLD; OR

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(2) A MULTIPLE CURRENCY CLAUSE WHEREBY THE LENDER IS GIVEN THE OPTION IN THE ALTERNATIVE OF RECEIVING PAYMENT IN FIXED AMOUNTS OF SEVERAL DIFFERENT SPECIFIED CURRENCIES; OR

(3) AN ARTIFICIAL UNIT CLAUSE SUCH AS THE EURCO PROVIDING FOR PAYMENT IN CURRENCY EQUIVALENT TO A PREDETERMINED UNIT OF ACCOUNT; OR

(4) SOME OTHER STANDARD FOR MEASURING THE VALUE OF THE CURRENCY OBLIGATION.

C. IF LEGAL PROHIBITIONS ON SUCH CONTRACT PROVISIONS EXIST, DO THEY AFFECT DOMESTIC CONTRACTS ONLY, OR INTERNATIONAL CONTRACTS AS WELL?

5. IT WOULD BE APPRECIATED IF POSTS COULD PROVIDE REPLIES BY SEPTEMBER 13, 1974.

6. FOR YOUR INFORMATION THE GOLD CLAUSE JOINT RESOLUTION, ADOPTED IN 1933, PROVIDES IN RELEVANT PART:

"EVERY PROVISION CONTAINED IN OR MADE WITH RESPECT TO ANY OBLIGATION WHICH PURPORTS TO GIVE THE OBLIGEE A RIGHT TO REQUIRE PAYMENT IN GOLD OR A PARTICULAR KIND OF COIN OR CURRENCY, OR IN AN AMOUNT IN MONEY OF THE UNITED STATES MEASURED THEREBY, IS DECLARED TO BE AGAINST PUBLIC POLICY; AND NO SUCH PROVISION SHALL BE CONTAINED IN OR MADE WITH RESPECT TO ANY OBLIGATION HEREAFTER INCURRED. EVERY OBLIGATION, HERETOFORE OR HEREAFTER INCURRED, WHETHER OR NOT ANY SUCH PROVISION IS CONTAINED THEREIN OR MADE WITH RESPECT THERETO, SHALL BE DISCHARGED UPON PAYMENT, DOLLAR FOR DOLLAR, IN ANY COIN OR CURRENCY WHICH AT THE TIME OF PAYMENT IS LEGAL TENDER FOR PUBLIC AND PRIVATE DEBTS. ANY SUCH PROVISION CONTAINED IN ANY LAW AUTHORIZING OBLIGATIONS TO BE ISSUED BY OR UNDER AUTHORITY OF THE UNITED STATES IS HEREBY REPEALED, BUT THE REPEAL OF ANY SUCH PROVISION SHALL NOT INVALIDATE ANY OTHER PROVISION OR AUTHORITY CONTAINED IN SUCH LAW." KISSINGER

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Concepts: MONETARY GOLD, GOLD TRANSACTIONS
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Draft Date: 27 AUG 1974
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Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: golinofr
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
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Drafter: TREAS:NJACKLIN:GCW
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30 JUN 2005

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